Senior Investor Protection Symposium Report

Jason Kander
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Fellow Missourians:

My office works tirelessly to protect Missourians' hard-earned savings by investigating cases of financial fraud and bringing actions against those who scam our friends and neighbors. We educate the public on safe investing by speaking with various organizations throughout the state and through our public service announcements. We're making progress, but there is still more work to be done to protect Missouri investors.

Immediately following my election as Secretary of State, I met with representatives from top financial firms based in Missouri. We all agreed one of the most vital tasks of my office's Securities Division was to work closely with the financial services industry to protect Missouri seniors and their life savings.

On October 8, 2014, I convened our first Senior Investor Symposium to address the issue of financial exploitation of senior investors, particularly those suffering from cognitive decline. The symposium brought together financial industry representatives, medical experts, policymakers and senior advocates for the first time. Each spoke to the unique challenges they face in addressing this issue and offered solutions for ways we can work together to prevent fraud.

I'm pleased to present this report, which details the presentations heard at the symposium and explores ways to help Missouri move forward in preventing elder financial abuse.

Sincerely,

Jason Kander

Jason Kander

PANELISTS

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Missouri Secretary of State

Craig Eichelman
State Director, AARP

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PRESENTERS

Page Ulrey
Senior Deputy Prosecuting Attorney, King County, Washington

Dr. John Morris
Harvey A. and Dorismae Hacker Friedman Distinguished Professor of Neurology
Washington University-St. Louis

Kathryn Sapp
Bureau Chief, Division of Senior and Disability Services, Missouri Department of Health and Senior Services

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Andy Blocker
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Securities Industry and Financial Markets Association (SIFMA)

EXECUTIVE SUMMARY

Seniors are an increasingly attractive target for those who commit financial fraud. Our seniors, a large and growing segment of our population, tend to have greater financial resources than younger generations, and are more likely to face losses in cognitive ability.

Nationally, baby boomers control nearly $13 trillion in investable assets,[1] and by 2030 they will be in the 65 years or older segment of our population. The number of Americans over the age of 65 will rise from 40 million in 2010 to 72 million in 2030, representing nearly 20 percent of the population in the United States.[2]

In Missouri, the population trends are similar. According to the Missouri Senior Report, in 2011 there were 865,652 seniors in the state of Missouri, comprising 14.2 percent of the population. By 2030, this number is expected to be 1,413,266 and represent 21 percent of Missouri's entire population.[3]

The risk of diminished mental capacity increases with age. The Geriatric Mental Health Foundation estimates 4 million Americans currently suffer from Alzheimer's disease or a related form of dementia. In Missouri, more than 110,000 individuals are currently living with Alzheimer's or related dementia. By 2025, that number will be more than 130,000.[4]

Unfortunately, losses in cognitive ability often take time to diagnose, making elder financial abuse particularly difficult to recognize and causing many cases to go unreported. But by working together, the financial services industry, senior advocates and other agencies serving our seniors can more effectively identify and combat elder financial abuse.

By bringing together top financial industry representatives, experts in the field of cognitive decline, state enforcement and regulatory agencies, and senior citizen advocates, the Senior Investor Protection Symposium provided a unique opportunity to examine the issue of elder financial abuse in a collaborative way.

The symposium included discussions of existing practices and highlighted efforts in other states as policy recommendations. The secretary of state's office will continue to work with senior advocates, financial services industry professionals and lawmakers to develop policy solutions to further protect Missouri seniors.

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[1] SEC, NASAA and FINRA, "Protecting Senior Investors: Compliance, Supervisory and other practices used by financial services firms in serving senior investors." September 22, 2008. Accessed October 12, 2014. http://www.sec.gov/spotlight/seniors/seniorspracticesreport092208.pdf
[2] Vincent, Grayson K. and Victoria A. Velkoff, 2010, THE NEXT FOUR DECADES, The Older Population in the United States: 2010 to 2050, Current Population Reports, P25-1138, U.S. Census Bureau, Washington, DC.
[3] Missouri Senior Report is published by the University of Missouri Office of Social and Economic Data Analysis (OSEDA) and University of Missouri Extension in collaboration with the State of Missouri Department of Health and Senior Services (DHSS).
[4] Missouri Alzheimer's State Plan Task Force. November 2010. Accessed October 16, 2014. http://www.alz.org/stl/documents/Final_Report.pdf

SESSION 1 SUMMARY

Presenter: Page Ulrey, Senior Deputy Prosecuting Attorney, King County, Washington[5]

Elder financial exploitation: A growing crisis
Senior investors control an incredible amount of assets, and transfers of these assets occur every day. In fact, $18 trillion or more will move between the generations in the next 20 years.[6] During that time, 10,000 people will turn 65 every day,[7] and 20 percent will be victims of financial exploitation.

Unfortunately, victims often do not report elder financial abuse. Many seniors fear losing independence if they report financial exploitation, while others worry about retaliation by a perpetrator. Often the perpetrators have close ties to the victim. Many victims have an emotional dependence on a perpetrator, and retaliation may be as simple as no longer having a visitor or assistance in daily activities. The emotional dependence or close relationship of an abuser may also contribute to a lack of awareness or disbelief that exploitation is happening. Finally, many victims suffer from dementia or some kind of cognitive impairment, which further contributes to a lack of knowledge that exploitation is occurring.

Perpetrators often hold positions of trust
Caregivers, family members or close friends can sometimes be the perpetrators of elder financial abuse. A fiduciary or other person in a position of trust or a stranger who targets seniors and develops a trust relationship can also perpetrate elder financial abuse.

Because of the trust relationship between the perpetrator and the victim, perpetrators are often able to take advantage of their victims through abuse of fiduciary relationships, intimidation, deception and undue influence—a pattern of manipulative behaviors aimed at "grooming" a victim to release assets to a perpetrator. This generally involves victims who are isolated, lonely and vulnerable.

Barriers to financial services industry reporting
Financial industry professionals can be among the few defenders of a possible victim of elder financial abuse. Many have long term relationships with clients and are aware of normal client behavior. For seniors who are isolated, a financial advisor or broker-dealer may be the person most likely to identify uncharacteristic financial behavior. But financial industry professionals face barriers in reporting suspected elder financial abuse. It is difficult to distinguish between

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[5] In 2001, the King County Prosecutors office formed the elder abuse project to prosecute cases of elder financial exploitation, neglect, sexual assault and homicide. They train first responders, the medical community and public works to improve systemic response to elder abuse.
[6] Sarbjit Nahal and Beijia Ma, equity strategists at Bank of America Merrill Lynch, expect a $12 trillion transfer from those born in 1920s and 30s to baby boomers. However, Boomers are expected to transfer an additional $30 trillion in assets to their heirs over the next 40 years. Mamta Badkar. "We're On The Verge Of The Greatest Transfer Of Wealth In The History Of The World" Business Insider. June 12, 2014. Accessed October 16, 2014. http://www.businessinsider.com/biggest-transfer-of-wealth-in-history-2014-6#ixzz3GPTn7Nf7
[7] over the next 19 years, according to the Pew Research Center: http://www.pewresearch.org/daily-number/baby-boomers-retire/

financial exploitation or free choice. There is a lack of adequate screening tools to determine the capacity of an investor. Training employees on this topic is more difficult at smaller firms with fewer resources. And firms can be fearful of intruding upon client's privacy and fearful of liability.

Criminal enforcement

Consider this example from King County, Washington: The perpetrator was a longtime agent for an insurance company who targeted five of her most vulnerable clients. They were elderly, lived alone and some had mild dementia. She developed a trust relationship with them over time, and told her victims their annuities were maturing. The perpetrator instructed her victims to write checks to her for "reinvestment," and stole a total of $1,052,000. She was charged with multiple counts of felony theft in King County Superior Court and pleaded guilty to 10 counts of theft in the first degree and vulnerable victim aggravators. She was sentenced to 75 months in prison.

Taking an elderly person's assets by abuse of fiduciary relationship, undue influence, intimidation or deception is also a crime under Missouri law.[8]

But criminal prosecutions of elder financial abuse cases are often quite difficult to pursue. They are multifaceted, often involving powers of attorney, guardianships, trusts, wills and nebulous concepts of capacity and undue influence.

> *RSMo. 570.145. 1. A person commits the crime of financial exploitation of an elderly or disabled person if such person knowingly by deception, intimidation, undue influence, or force obtains control over the elderly or disabled person's property with the intent to permanently deprive the elderly or disabled person of the use, benefit or possession of his or her property thereby benefitting such person or detrimentally affecting the elderly or disabled person.*[9]

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[8] Due to the criminal code revisions, the language will change to the following on January 1, 2017: 570.145. 1. A person commits the offense of financial exploitation of an elderly person or a person with a disability if such person knowingly obtains control over the property of the elderly person or person with a disability with the intent to permanently deprive the person of the use, benefit or possession of his or her property thereby benefitting the offender or detrimentally affecting the elderly person or person with a disability by:
(1) Deceit;
(2) Coercion;
(3) Creating or confirming another person's impression which is false and which the offender does not believe to be true;
(4) Failing to correct a false impression which the offender previously has created or confirmed;
(5) Preventing another person from acquiring information pertinent to the disposition of the property involved;
(6) Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim or other legal impediment to the enjoyment of the property, whether such impediment is or is not valid, or is or is not a matter of official record;
(7) Promising performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not sufficient evidence to prove that the offender did not intend to perform; or
(8) Undue influence, which means the use of influence by someone who exercises authority over an elderly person or person with a disability in order to take unfair advantage of that person's vulnerable state of mind, neediness, pain, or agony. Undue influence includes, but is not limited to, the improper or fraudulent use of a power of attorney, guardianship, conservatorship, or other fiduciary authority.

[9] Law applies to those 60 years and older as well as vulnerable adults 18–59 years of age.

A complete knowledge of these concepts is important for investigation and prosecution, but rarely are they addressed within a criminal law framework. Most cases of elder financial abuse require compilation and analysis of complete financial records, but few criminal investigators have the specialized financial background to be able to properly explore possible crimes.

As a result, these cases are often pushed into civil court, if they are pursued at all. Still, very little coordination exists between the financial services industry, health care providers, social services professionals and the civil legal system.

The financial services industry is crucial in this fight. The industry is keenly aware of the importance of seniors having assets sufficient to carry them through retirement. Broker-dealers and investment advisors can also be keenly aware of clients' susceptibility to exploitation, and may have occasion to witness troubling interactions between clients and potential scammers. Finally, financial industry professionals might be the only third party aware of a depletion of client assets.

"WE FIND FINANCIAL EXPLOITATION TO BE THE MOST COMMON OF ANY ELDER ABUSE WE SEE."

—PAGE ULREY, SENIOR DEPUTY PROSECUTING ATTORNEY

Washington state passed legislation that acknowledges the integral role of the financial industry and empowers financial professionals to help prevent elder financial abuse. The Abuse of Vulnerable Adults Act (RCW 74.34) includes the following key elements:

- Allows financial institutions to:
  - Report to the Washington State Department of Social and Health Services (DSHS) or local police when there is reason to believe a vulnerable adult is being or has been abandoned, abused, financially exploited or neglected
  - Share complete records with DSHS, law enforcement and prosecutors when financial exploitation (FE) is suspected
  - Freeze assets of suspected exploiters or victims
  - Avoid civil liability when acting in good faith
- Considers employees of financial institutions, attorneys and volunteers who work with elders permissive reporters of elder financial abuse
- Requires training on elder and vulnerable adult financial exploitation for employees of financial institutions, broker-dealers and investment advisers[10]

[10] Conducted by the Washington attorney general's office

SESSION 2 SUMMARY

Presenter: Dr. John Morris, Washington University in St. Louis, Harvey A. and Dorismae Hacker Friedman Distinguished Professor of Neurology

Cognitive decline, dementia and Alzheimer's disease

Many older individuals age with their cognitive abilities generally intact. They remain independent and able to execute daily activities. This is because aging itself is not the cause of cognitive decline; rather, it's the diseases that sometimes accompany aging that cause cognitive decline.

Dementia affects both memory and executive function. Real-world examples of difficulty in executive function are the inability to learn new technology, difficulty driving and inability to make financial decisions. Often family members first notice a change in either memory or executive function, but these changes are subtle and individualized. In fact, very few people recognize dementia-related changes in themselves. In early stages, for example, it's possible for an individual suffering from cognitive decline to perform most daily tasks with little interference, but more complicated and technical tasks—like driving or managing personal finances—become much more difficult.

" [THOSE WITH COGNITIVE DECLINE] WILL BE AT RISK FOR POOR JUDGEMENT, DECISIONS AND INAPPROPRIATE ACTIVITY."

—DR. JOHN C. MORRIS

Medically, dementia occurs when a person has declined in their cognitive abilities to the point it interferes with his or her ability to execute daily activities. It's almost always progressive and can be quite deceptive.

It is difficult to pinpoint the moment when dementia begins. Generally the losses in cognitive ability are very subtle. It often takes years before it becomes obvious the losses are progressive, which makes it even more difficult to detect.

Alzheimer's, the most common cause of dementia,[11] is a disease of select brain cells. Humans have brain cells specialized for a number of purposes: vision, movement, sensation and cognition. Cognitive cells are responsible for a variety of functions, including memory, judgment, attention, personality and language. These are the most developed brain cells in the entire animal kingdom, and the cells most vulnerable to Alzheimer's. Cognitive cells deteriorate and die over an extended period of time, which is why early signs of Alzheimer's—and dementia more broadly—are so subtle.

This period of deterioration and death of cells can go undetected for 20–25 years before noticeable symptoms develop.

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[11] 80 percent of dementia is caused by Alzheimer's.

SESSION 3 SUMMARY

Presenter: Kathyrn Sapp; Bureau Chief, Division of Senior and Disability Services, Missouri Department of Health and Senior Services

DHSS' role in addressing the problem of elder abuse

The Department of Health and Senior Services (DHSS) is the primary state department that investigates elder abuse cases in Missouri. Within DHSS, the Division of Senior and Disability Services is mandated to carry out and oversee programs designed to maximize individuals' independence. It has 217 field staff around the state and maintains an elder abuse hotline,[12] which received 23,000 calls in 2013.

DHSS has found elder financial abuse to be significantly underreported. DHSS estimates financial losses among the elderly in Missouri are $195 million annually, with an average of $11,000 lost per victim.

"[FINANCIAL] ADVISORS MAY HAVE PIECES OF THE PUZZLE THAT WE AREN'T ABLE TO GLEAN FROM OUR CONTACT WITH A CLIENT."

—KATHRYN SAPP, DHSS

Elder abuse investigations

The Division of Senior and Disability Services has a special investigatory unit that explores all reports of elder abuse, neglect and exploitation. DHSS has found that because of its complexity, elder financial abuse is one of the most difficult types of abuse to investigate. Often, this kind of exploitation is multi-jurisdictional and requires assistance from multiple agencies, including from the financial industry.

SESSION 4 SUMMARY

Presenter: Anneliese Stoever, Information and Assistance Coordinator, St. Louis Area Agency on Aging

St. Louis Area Agency on Aging (SLAAA) is 1 of 10 Area Agencies on Aging that provide services in Missouri, and 1 of 600 across the United States. It is funded federally through the Older Americans Act, DHSS and other grants. It oversees programs such as Meals on Wheels and provides health screenings, educational programming and some transport services.

Elder financial abuse observed by SLAAA

SLAAA also assists seniors in transitioning from their homes to senior living facilities. Consider this example of elder financial abuse observed by SLAAA:

SLAAA client "Tom"[13] had a home falling down around him and was unable to fix it himself.

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[12] 1-800-392-0210: The hotline is staffed 365 days a year.

[13] Name has been changed.

He arranged to have it repaired. When it became clear the house needed much more than a few roof repairs, Tom decided to move into senior housing. SLAAA helped Tom with the paperwork and transportation. On the day he was to be moved, he was not at his home.

SLAAA called Tom's cell phone and learned he was at a used car lot. He mentioned a man had come and patched his roof when he was not there, but returned for payment. Tom had already made two payments of $900, but the man returned and was requesting more. The man said he would forgive the debt if Tom co-signed on an auto loan. SLAAA instructed Tom not to sign anything and offered to come pick him up.

The man dropped Tom off a block away from his home and promptly left. Tom couldn't remember the name of the car lot, but SLAAA collected enough information to discover the lot and call them. The salesperson said the man claimed to be Tom's grandson. The salesperson noted that Tom seemed to be confused, so he prevented the sale from happening. The police were called and it was discovered the man was wanted in other states for similar scams.

SESSION 5 SUMMARY

Presenter: Andy Blocker, Executive Vice President of Public Policy and Advocacy, SIFMA[14]

Vulnerability of senior investors

A 2012 survey from the Investor Protection Trust (IPT) found more than 4 out of 5 experts[15] believed the problem of elder fraud was getting worse. Nearly all of those experts said elderly Americans are vulnerable to financial fraud, and the problem is serious.[16]

The findings of the IPT survey corroborate evidence found by other studies. A 2011 MetLife study found that seniors lose at least $2.9 billion[17] annually to financial exploitation.[18] And SIFMA estimates approximately 1 in 5 Americans aged 65 or older have been victimized by financial fraud. SIFMA also estimates 55 percent of financial abuse in the United States is committed by family members, caregivers or friends.

Types of financial scams

Most people are aware of Nigerian letter fraud examples, where a "prince" wants to share a percentage of fortune with you but needs money to help him transfer those funds out of the country. Other common types of fraud include "sweetheart" or "romance" scams, lottery scams

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[14] Securities Industry and Financial Markets Association (SIFMA) is a financial industry trade group that represents hundreds of securities firms, banks and asset managers.

[15] In this survey, "experts" referred to 753 individuals employed in social work, elder law, state securities regulation, adult protective services and the financial industry.

[16] See also: Results from the Investor Protection Trust/Investor Protection Institute Elder Investment Fraud and Financial Exploitation Survey of Experts. Released on August 15, 2012. http://www.investorprotection.org/downloads/IPT-IPI_EIFFE_Expert_Survey_CFPB_08-15-12.pdf.

[17] https://www.metlife.com/assets/cao/mmi/publications/studies/2011/mmi-elder-financial-abuse.pdf

[18] A 12 percent increase from the 2.6 billion estimated by MetLife in 2008; further indication the problem is worsening.

and power of attorney fraud. SIFMA indicates that power of attorney fraud is the most prevalent in the financial services sector.

Consider this example: The client is a 70-year-old male who was estranged from his two children and divorced. The firm received a request for a power of attorney submitted on Christmas Eve by the client's neighbor, who insisted on immediate approval. The financial advisor raised concerns with management, but because diminished capacity was not suspected, the power of attorney was approved.

Next, the new power of attorney—the neighbor— requested a beneficiary change on the client's IRA from the client's children to herself, with her husband listed as a contingent beneficiary. The financial advisor declined the request for change and asked for client approval and his signature. A few days later the signed papers were returned with what looked like an official signature from the client.

The financial advisor asked the client to come into the branch for a visit. He arrived with the neighbor, his new power of attorney. The financial advisor separated them for the meeting, despite the neighbor's objections. Privately, the client indicated that he did not want to change the named beneficiaries. He also said that he wasn't sure he needed power of attorney at that time, but may need one in the future. He allowed the power of attorney designation to stand in an effort to keep things amenable with his neighbor. By this time, the power of attorney came back into the room and ended the conversation.

The financial advisor proposed all transactions go through the client, to which all parties agreed.

Approximately one month later, the financial advisor was contacted by his call center saying there was a request for a $10,000 withdrawal from the client's retirement account, a request which was submitted by the power of attorney. It was then determined the account should be frozen. The financial advisor contacted the client, who was unaware of the withdrawal and appeared confused.

The matter was referred immediately to Adult Protective Services (APS)[19]. Adult Protective Services contacted the client and determined he should have a mental health evaluation, to which the client agreed. However, when the doctor visited the client, the client became agitated and ordered the doctor off the property.

The financial advisor then began receiving angry calls from the power of attorney to honor the $10,000 withdrawal request. At this point, the financial advisor called the client's son and suggested he visit his father. The son visited and discovered the neighbor had opened joint credit cards and created balances, opened a second mortgage on the client's home and cashed in multiple insurance policies. The son contacted the police, and there is now an active investigation in the matter.

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[19] General term for agencies like DHSS.

CONCLUSION

Jason Kander is committed to protecting Missourians from financial fraud. Through the work of the Securities Division, his office knows some of the most vulnerable victims are seniors dealing with health issues such as cognitive decline. The Senior Investor Symposium was held to examine the issues seniors face in investing their hard-earned savings and identify steps we can take in Missouri to help protect them.

The symposium marked the beginning of a conversation among financial services industry professionals, senior advocates and law enforcement about how cognitive decline can make it difficult for seniors to make sound investment decisions, and how this difficulty makes them especially vulnerable to scams and bad actors.

Addressing these issues is both a great challenge and a great opportunity. By working together, we can shape policies that reflect our shared commitment to protecting our seniors from fraud.

In the coming weeks and months, the secretary of state's office will continue to work with senior advocates, financial services industry professionals and lawmakers to develop policy solutions to further protect Missouri seniors.